



CONGRESSIONAL BUDGET OFFICE PRIVATE-SECTOR MANDATES STATEMENT

October 8, 2004

S. 2145 SPY BLOCK Act

*As ordered reported by the Senate Committee on Commerce, Science,
and Transportation on September 22, 2004*

SUMMARY

S. 2145 would regulate computer software used to collect personal information, monitor the behavior of computer users or produce pop-up advertisements on personal computers. The bill would prohibit installing such software on someone's computer without notice and consent from the owner or authorized user of that computer. The bill would require all downloadable software to be easy to uninstall. The bill would prohibit an unauthorized user of a computer to install software that would launch ads “in a manner or at a time such that a reasonable user would not understand that the software is responsible for delivering the advertisements.”

S. 2145 would impose private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on persons who install software that can be used to collect information from computers owned by unrelated parties. Based on information from the industry and the Federal Trade Commission (FTC), CBO expects that the aggregate direct cost to comply with those mandates would fall below the annual threshold established by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation).

PRIVATE-SECTOR MANDATES CONTAINED IN THE BILL

S. 2145 contains three private-sector mandates as defined in UMRA. First, the bill would require persons to notify and obtain authorization from the owner or authorized user of a computer before installing software that tracks information on that computer unrelated to the functioning of software that the authorized user has consented to install or execute.

Second, the bill would prohibit unauthorized persons from installing software on a computer if the software is designed to prevent reasonable efforts by the owner or authorized user of the computer to uninstall or disable the software once it has been installed.

Third, firms whose software causes advertisements to appear on the computer have to label or otherwise identify the advertisement so that the computer user can tell which software is responsible for the advertisement's delivery.

The costs of complying with those mandates would not likely be large. According to the FTC, most of the requirements contained in this bill represent only marginal changes beyond what companies are obliged to do under current law. Most software installation procedures already contain one or more pages that display notices and request authorization. The notification requirements under the bill in many instances could be met by making existing notices more specific. In a few instances, however, software companies do not include any such agreement or authorization notices, and they would bear some costs. In addition, under current law, companies can be prosecuted if the difficult-to-remove software causes consumer harm, under Section V of the Federal Trade Commission Act. S. 2145 would forbid difficult-to-remove software, even if it causes no substantial consumer harm. Based on information from the industry and the FTC, CBO expects that the aggregate direct cost to comply with the mandates in the bill would fall below UMRA's annual threshold for private-sector mandates.

PREVIOUS CBO ESTIMATES

On July 8, 2004, CBO transmitted a cost estimate for H.R. 2929, the Securely Protect Yourself Against Cyber Trespass Act, as ordered reported by the House Committee on Energy and Commerce on June 24, 2004. In addition, on September 28, 2004, CBO transmitted a cost estimate for H.R. 4661, the Internet Spyware (I-SPY) Prevention Act of 2004, as ordered reported by the House Committee on the Judiciary on September 8, 2004. Both of those bills and the current legislation address the use of spyware, which is software used to collect personal information and to monitor the behavior of computer users without permission. CBO determined that H.R. 2929 had private-sector mandates similar to those in S. 2145 and that the cost to comply with those mandates would be less than UMRA's annual threshold for private-sector mandates. CBO determined that H.R. 4661 contained no private-sector mandates.

CBO's analysis of the federal costs and intergovernmental impact of S. 2145 was transmitted on October 5, 2004.

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